

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Werner (TI-27316)

Conf. No. 8758

Serial No. 09/731,415

Group Art Unit: 2623

Filed: 6 December 2000

Examiner: Ustaris

For: Video Presentation Scheduling and Control Method and System

APPELLANT'S REPLY BRIEF

Commissioner for Patents

Washington, DC 20231

Dear Sir:

Appellants respectfully present his Reply Brief in response to the Examiner's Answer mailed October 19, 2007.

Appellant stands by his arguments as presented in the Substitute Appellants' Brief filed July 20, 2007. This Reply Brief responds to certain points of argument presented in the Examiner's Answer, which were in response to Appellant's arguments in his main Brief.

Argument in response to the Examiner's Answer

Claim 1 and its dependent claims

Appellant maintains that the final rejection under §103 of claims 1 through 4, 6, and 7 as unpatentable over the Rabowsky reference¹ in view of the Mercs et al. reference² is in error, for the reasons stated in his main Brief.

¹ U.S. Patent No. 6,141,530, issued October 31, 2000 to Rabowsky.

As mentioned above, Appellant will respond, in this Reply Brief, to certain points of argument raised in the Examiner's Answer, upon which the final rejection is maintained.

The final rejection is based on the assertion that the Rabowsky reference teaches certain parameters that correspond to the term in claim 1 of "attributes of the data presentation unit related to [] presentation" of a feature stored in the data library, namely "the projector output characteristics" of "size, aspect ratio, and the reflectivity of the screen".³ In the final rejection and the Examiner's Answer, the Examiner asserted that the Rabowsky reference teaches the term in claim 1 of "restrictions indicative of data presentation unit attributes useful for the presentation of the selected feature", by way of its "cinema file require[ing] that the projector system has proper authorization in order to present the cinema file".⁴

In his main Brief, Appellant argued that the "restrictions" found by the Examiner in the Rabowsky reference have nothing to do with the "attributes of the data presentation unit" found by the Examiner in the Rabowsky reference.⁵ In other words, according to the Rabowsky teachings, whether a given projector system has proper authorization to present a cinema file has exactly nothing to do with the projector output characteristics of that projector system. Appellant therefore urged that the Rabowsky reference does not disclose or suggest the operation of selecting one of the plurality of locations at which to present the selected feature based on a comparison of the restrictions applicable to the selected feature and the attributes of the data presentation unit at the selected location, as recited in claim 1. Not only does the Rabowsky reference not disclose a comparison of whether a particular projector system is authorized to present a particular cinema file⁶ to the projector output characteristics of that projector system⁷, but such a comparison makes no sense. Appellant urged this point in his main Brief, concluding that the Rabowsky reference does not disclose the elements of claim 1 in the manner asserted in the final rejection.

² U.S. Patent No. 6,384,893, issued May 7, 2002 to Mercs et al.

³ Office Action of August 9, 2006, pages 2 and 3, *citing* Rabowsky, *supra*, column 11, lines 54 through 60.

⁴ See Office Action, *supra*, page 3; Examiner's Answer, page 4, *citing* Rabowsky, *supra*, column 12, lines 8 through 28.

⁵ Substitute Appellant's Brief, page 8.

⁶ *I.e.*, the alleged "restrictions".

⁷ *I.e.*, the alleged "attributes".

In response to Appellant's argument in his main Brief, the Examiner asserted that "reading the claims in the broadest sense", the Rabowsky reference does disclose a system that is operable to select a location at which to present a selected feature based on a comparison of restrictions applicable to the selected feature and attributes of the data presentation unit at that location, as claimed. But in making this assertion of such a comparison, the Examiner has now completely and wholly avoided his previous assertion that the "projector output characteristics" of the Rabowsky reference correspond to the claim term of "attributes of the data presentation unit related to [] presentation" of a feature. Instead, the Examiner now asserts:

. . . the authorization of each screen room is considered an attribute of the screen room that is compared to the restrictions of the cinema file in order to ensure that the cinema files are played back only on authorized screen rooms.⁸

The authorization status of a screen room is now thought to meet the "attributes" claim limitation, when one "read[s] the claims in the broadest sense".⁹

Appellant understands that the Patent and Trademark Office gives pending claims their broadest reasonable interpretation.¹⁰ However, this broadest reasonable interpretation is to be carried out "in light of the specification as it would be interpreted by one of ordinary skill in the art".¹¹ Appellant submits that the proper interpretation of the claim term "attributes" in claim 1, even its broadest interpretation, cannot properly be stretched as far as the Examiner now stretches it, to encompass contractual authorization for the showing of a particular cinema feature.

The term "attributes" in claim 1 is recited as "attributes of the data presentation unit related to such presentation". To arrive at the broadest reasonable interpretation out "in light of the specification as it would be interpreted by one of ordinary skill in the art", as instructed by the Court of Appeals for the Federal Circuit, one must look to the specification of this application. The specification of this application provides good guidance in construing this term, by way of its examples of projection location attributes used to select a location for a selected

⁸ Examiner's Answer, page 10.

⁹ Examiner's Answer, page 9.

¹⁰ *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005); MPEP §2111.

¹¹ *Phillips, supra*, USPQ2d at 1329, citing *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827 (Fed. Cir. 2004).

feature – these examples include the type of video display of the presentation unit (*e.g.*, CINEMASCOPE™ display format), the type of audio output of the unit (*e.g.*, the SR-D, DTS™, or SDDS™ sound format, or THX™ certified systems), and whether decompression functionality is present at the location.¹² Each of these examples of attributes provided by the specification refer to a functional capability of the projection system or presentation unit, which is consistent with the claim language itself that requires these attributes to be related to the presentation of a feature. And to the extent that contractual requirements are involved in the selection of a location for presentation of a feature, those contractual requirements are not attributes of the projection location, but are instead *restrictions* on the content to be presented that can be *compared against* attributes of the presentation unit to select the location.¹³

Therefore, if one properly considers the actual language of claim 1, together with the specification, Appellant submits that there is no reasonable interpretation of the claim term “attributes” that would include the “authorization of each screen room”, as now asserted by the Examiner. Therefore, Appellant submits that the “broadest sense” in which the Examiner has interpreted claim 1 in this case is overly broad and in error. This error is due to the Examiner interpreting the claim term “attributes” without giving proper consideration to the specification in that interpretation.¹⁴

In the alternative, assuming *arguendo* that the Examiner is correct in interpreting “attributes” as including “authorization of each screen room” as taught by Rabowsky, Appellant submits that the Rabowsky reference still fails to disclose a server operable to select one of the plurality of locations at which to present the selected feature based on a comparison of the restrictions applicable to the selected feature and the attributes of the data presentation unit at the selected location, as claimed.

¹² Specification, *supra*, paragraph [0043].

¹³ *Id.*

¹⁴ As noted above, the Examiner’s response to Appellant’s arguments on this point ignores the previous assertion that it is the “projector output characteristics” of the Rabowsky reference that correspond to the “attributes” of claim 1 (see Examiner’s Answer, page 3). Perhaps the Examiner now agrees with Appellant’s argument that the reference fails to teach that those “attributes” have anything to do with the “restrictions” asserted by the Examiner? If so, attention is directed to the next few paragraphs of this Reply Brief.

The absence of teachings regarding such a select operation is apparent from the cited location of the Rabowsky reference itself.¹⁵ A fair reading of that portion of the reference leads the skilled reader to the understanding that the “Headend” provides to the theater a “bit stream” that includes a “playback schedule” which “defines the authorized playback times for each cinema file and for each screen in the theater”.¹⁶ There is no comparison between presentation unit attributes and feature restrictions in the Rabowsky system. Given this statement, it is clear that the Rabowsky reference fails to disclose a server that selects a presentation location at which to present the feature based on the comparison between data presentation attributes at the location and restrictions applicable to the feature. Rather, this selection of “playback times for each cinema file and for each screen in the theater” is made at the “Headend”¹⁷ of the Rabowsky system, which transmits the playback schedule to the theater by way of satellite transmission, microwave, coaxial cable, fiber optic cable, and the like;¹⁸ the presentation of content according to the Rabowsky reference follows this predefined and communicated “playback schedule”, with no comparison of any type being performed. Indeed, the reference nowhere discloses that any “attributes” of the projection systems or screens are even considered in the playback schedule that is communicated by the Headend to the theater. This lack of disclosure is especially apparent considering the teachings in the Rabowsky reference regarding the manner in which the theater operator manually modifies the playback schedule, in each case notifying the Headend of the proposed change and, if contractual terms are violated, requiring the modified terms to be “accepted by the parties to the contract”.¹⁹ Clearly there is no “comparison” being made by a server in the Rabowsky system, because the playback schedule is a predefined and communicated decision, to which changes are negotiated by the theater and the Headend.

Appellant therefore submits, in the alternative, that even if the claim term “attributes” can be interpreted to include “authorization of each screen room”, as asserted by the Examiner, the Rabowsky reference still fails to disclose the server of the system of claim 1 and its dependent claims, because the selecting operation required of the claimed server is nowhere disclosed by

¹⁵ Rabowsky, *supra*, column 12, lines 8 through 28.

¹⁶ Rabowsky, *supra*, column 12, lines 9 through 12.

¹⁷ Rabowsky, *supra*, column 2, lines 27 through 39.

¹⁸ Rabowsky, *supra*, column 4, lines 28 through 41.

¹⁹ Rabowsky, *supra*, column 12, lines 19 through 25.

the reference.²⁰ The final rejection of claim 1 and its dependent claims, which is now based on the assertion that the Rabowsky reference provides such teachings, is therefore ill-founded.

For this additional reason, Appellant maintains that the final rejection of claim 1 and its dependent claims is in error.

And as stated in his main Brief, Appellant maintains that there is no suggestion from the prior art, or from the common sense or ordinary creativity of the skilled artisan,²¹ to modify the teachings of the Rabowsky and Merces et al. reference in such a manner as to reach claim 1. Neither reference discloses or suggests that the data corresponding to the various features may have different restrictions regarding the presentation of those features on presentation equipment. In other words, neither reference even mentions the problem addressed by the invention of claim 1, much less suggest modifying the teachings of these references to reach the claim by providing a server that operates to select presentation locations by matching feature restrictions and presentation unit attributes, as performed by the system of claim 1 and its dependent claims. Accordingly, Appellant submits that it requires more than common sense or ordinary creativity to modify the combined teachings of the Rabowsky and Merces et al. references to arrive at the invention of claim 1.²² And for this reason, Appellant submits that claim 1 and its dependent claims are in fact patentably distinct over the applied references.

For these reasons, Appellants submit and maintain that the final rejection under §103 of claim 1 and its dependent claims 2 through 4, 6, and 7 should be reversed.

Claim 8 and its dependent claims

Appellant maintains that the final rejection of claims 8 through 13 under §103 as unpatentable over the Rabowsky reference in view of the Merces et al. reference is in error, for the reasons stated in his main Brief.

The points of argument raised by the Examiner in response to Appellant's Brief, and noted above relative to claim 1 and its dependent claims, were indicated by the Examiner as also

²⁰ Nor by the Merces et al. reference or any other reference of record, as asserted previously.

²¹ *KSR International Co. v. Teleflex Inc et al.*, 550 U.S. ____; 127 SCt 1727; 167 L.Ed.2d 705; 82 USPQ2d 1385 (2007).

²² *KSR, supra*.

applicable to independent claim 8 and its dependent claims 9 through 13. As such, Appellant's arguments above, made in reply to those points of argument relative to claim 1 and its dependent claims, are also intended to apply to claims 8 through 13.

In short, Appellant submits that the Examiner has also misinterpreted the limitation of claim 8 to the extent that the Examiner now considers the attributes of the data presentation unit useful for the presentation of data, as required by claim 8, to include "authorization of each screen room".²³ The proper interpretation of claim language, even in giving a claim its broadest reasonable interpretation, requires interpretation of the claim language "in light of the specification as it would be interpreted by one of ordinary skill in the art".²⁴ For the reasons discussed above relative to claim 1, Appellant submits that if such consideration of the specification were given, the proper interpretation of the claim term "attributes of the data presentation unit related to such presentation" in claim 8 would not include "authorization of each screen room" as now asserted by the Examiner.

In the alternative, as discussed above relative to claim 1, even if the claim term "attributes" is interpreted in the manner now asserted by the Examiner, Appellant submits that the Rabowsky reference fails to disclose the scheduling and control process of claim 8, as asserted by the Examiner. The Rabowsky reference²⁵ fails to disclose or suggest the operation of selecting a location at which to present the selected feature based on a comparison of attributes of the data presentation unit and the restrictions applicable to the selected feature, as claimed. Rather, as discussed above, the Rabowsky reference teaches only the transmission of a bit stream from a Headend, the bit stream including a "playback schedule" in which preselected screens are scheduled to show particular content. This lack of disclosure regarding the selecting operation is especially evident considering that this "playback schedule" can only be modified by communication between the theater and the Headend, sometimes involving modification of contract terms.

²³ Examiner's Answer, page 10.

²⁴ *Phillips, supra*, USPQ2d at 1329.

²⁵ And also each of the other references of record, including the Mercs et al. reference.

Therefore, the Rabowsky reference, as well as the other references of record including the Mercs et al. reference, fails to disclose the selecting operation required of the scheduling and control process of claim 8 and its dependent claims. Because the final rejection of the claims is based on the assertion that this operation is so disclosed, Appellant maintains that the final rejection is in error.

And for the same reasons as discussed above relative to claim 1, Appellant maintains that there is no suggestion from the prior art, or from the common sense or ordinary creativity of the skilled artisan, to modify the properly combined teachings of the Rabowsky and Mercs et al. reference in such a manner as to reach claim 8 and its dependent claims. Appellant therefore maintains that claim 8 and its dependent claims are in fact patentably distinct over the applied references.

For these reasons, Appellants maintain and again submit that the final rejection under §103 of claim 8 and its dependent claims 9 through 13 is in error, and should be reversed.

Claim 15 and its dependent claims

Appellant maintains that the final rejection under §103 of claims 15 through 19 as unpatentable over the Rabowsky reference in view of the Mercs et al. reference is in error, for the reasons stated in his main Brief.

The points of argument raised by the Examiner in response to Appellant's Brief, and noted above relative to claim 1 and its dependent claims, were indicated by the Examiner as also applicable to independent claim 15 and its dependent claims 16 through 19. As such, Appellant's arguments above, made in reply to those points of argument relative to claim 1 and its dependent claims, are also intended to apply to claims 15 through 19.

Appellant therefore also submits that the Examiner has misinterpreted the limitation of claim 15 regarding "data presentation unit attributes useful for the presentation of the selected feature". As discussed above, the Examiner now apparently considers these attributes, properly interpreted "in its broadest sense", to include "authorization of each screen room".²⁶ As

²⁶ Examiner's Answer, pages 9 and 10.

discussed at length above, Appellant submits that this interpretation is in error. Even if one construes claim language according to its broadest reasonable interpretation, such interpretation of the claim is to be done in light of the specification as it would be interpreted by one of ordinary skill in the art.²⁷ For the reasons discussed above relative to claims 1 and 8, Appellant submits that if such consideration of the specification were given, the proper interpretation of the claim term “data presentation unit attributes useful for the presentation of the selected feature”, in claim 15, would not include “authorization of each screen room”, as now asserted by the Examiner.

In the alternative, as discussed above relative to claims 1 and 8, even if the claim term “attributes” is interpreted in the manner now asserted by the Examiner, Appellant submits that the Rabowsky reference fails to disclose the step of selecting a location in which to present the selected feature, as recited in claim 15. The Rabowsky reference fails²⁸ to disclose or suggest the operation of selecting a location at which to present the selected feature based on a comparison of attributes of the data presentation unit and the restrictions applicable to the selected feature. The Rabowsky reference instead teaches only the transmission of a “playback schedule” included in a bit stream transmitted from a Headend, that schedule indicating which preselected screens are scheduled to show which preselected particular content. The absence of any selecting as required by claim 15 is especially apparent considering that modification of the Rabowsky “playback schedule” requires notification of the Headend, and perhaps modification of contract terms by agreement of the contract parties.

The Rabowsky reference and the other references of record therefore all fail to disclose the selecting step recited in claim 15 and its dependent claims. Because the final rejection of the claims is based on the assertion that the Rabowsky reference teaches this step, Appellant maintains that the final rejection is in error.

And for the same reasons as discussed above relative to claims 1 and 8, Appellant maintains that there is no suggestion from the prior art, or from the common sense or ordinary creativity of the skilled artisan, to modify the properly combined teachings of the Rabowsky and

²⁷ *Phillips v. AWH Corp.*, *supra*, USPQ2d at 1329.

²⁸ And each of the other references of record, including the Mercs et al. reference.

Mercs et al. reference in such a manner as to reach claim 15 and its dependent claims. Appellant therefore maintains that claim 15 and its dependent claims are in fact patentably distinct over the applied references.

For these reasons, Appellants submit that the final rejection under §103 of claim 15 and its dependent claims 16 through 19 is in error, and should be reversed.

In conclusion

For the above reasons, Appellant respectfully maintains that the final rejection of the claims on appeal is in error, and should be reversed. Reversal of that final rejection is again respectfully requested.

Respectfully submitted,
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